

### **REMARKS/ARGUMENTS**

Claims 1 and 3-21 are pending in the application. Applicants have amended claims 1 and 21 to clarify that the tissue approximation device of the present invention has adhesive pads that are spaced apart from the attachment means in the direction of the elongate arms, and that the tissue approximation device has an open and a closed position, and when in the closed position, the adhesive pads are parallel and non-contiguous to each other. Support for this amendment can be found in the originally filed drawings 1-2, 6, 9 and 11. No new matter has been incorporated into the application as a result of the amendments made herein.

#### **Election of Species**

The Examiner has required Applicant to elect a single disclosed species for prosecution of the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Specifically, an election of one of the following species has been required:

Species 1 – Figure 2, relating to a pair of slidable bosses attachment means; or

Species 2 – Figure 6, relating to a yoke attachment means.

In a telephone conversation with the Examiner on 16 May 2006, Applicant provisionally elected Species 2, to which the claims will be restricted if no generic claim is finally held to be allowable. Applicants hereby confirm the election of Species 2. Claims 1, 5-6, 8, 10, 12, 14, 16, 18-21 read on the elected species and claims 1 and 19-21 are generic.

### **Rejection Under 35 USC 102(b) Based on Hasson**

The Examiner has rejected Claims 1, 2 and 19-21 as being anticipated by Hasson.

Applicants have amend claim 1 and 21 to clarify that the tissue approximation device of the present invention has adhesive pads that are spaced apart from the attachment means in the direction of the elongate arms, and that the tissue approximation device has an open and a closed position, and when in the closed position, the adhesive pads are parallel and non-contiguous to each other. The arrangement of the adhesive pads and the attachment means in the present invention allows the device to be used during application and curing of a topical skin closure adhesive on the wound, as described in lines 1-5 on page 2 of the instant specification. More specifically, as shown in Figure 11, the attachment means does not traverse the wound, leaving the wound accessible for closure using a topical skin closure adhesive.

By contrast, Hasson discloses a device where the adhesive pads are collinear with the attachment means for the full length of the elongate arms, thereby preventing its device from being used during application and curing of a topical skin closure adhesive on the wound. More particularly, the attachment means of Hasson (tie member 22) traverse the wound, making the wound inaccessible for closure using a topical skin closure adhesive. It is clear that the device described by Hasson is not intended to be used during application and curing of a topical skin closure adhesive. In summary, Hasson fails to disclose a device where the adhesive pads are spaced apart from the attachment means in the direction of the elongate arms, thereby leaving the wound accessible for wound closure using a topical skin closure adhesive.

In view of the foregoing remarks, it is clear that the present invention is not anticipated by Hasson. Accordingly, reconsideration and withdrawal of this rejection are appropriate.

### **Rejection Under 35 USC 102(b) Based on Fogarty**

The Examiner has rejected Claims 1, 5-6, 12, 14, 16, and 18 being anticipated by Fogarty.

As discussed above, Applicants have amended claim 1 to clarify that the tissue approximation device of the present invention has adhesive pads that are spaced apart from the attachment means in the direction of the elongate arms, and that the tissue approximation device has an open and a closed position, and when in the closed position, the adhesive pads are parallel and non-contiguous to each other. The arrangement of the adhesive pads in the present invention allows the device to be used to maintain approximation of a wound without substantial eversion of the edge surfaces of the wound during application and curing of a topical skin closure adhesive on the wound, as described in lines 1-5 on page 2 of the instant specification. More specifically, as shown in Figure 11, the adhesive pads remain parallel in the same plane and are non-contiguous to each other.

By contrast, Fogarty discloses a clamp device where the cohesive-adhesive pads are parallel in different planes and contiguous when the device is in the closed position. It is clear that the clamp device of Fogarty is intended for use in vessel occlusion, not to approximate a wound. In summary, Fogarty fails to disclose the tissue approximation device of the present invention that has an open and a closed position, and when in the closed position, the adhesive pads are parallel and non-contiguous to each other.

In view of the foregoing remarks, it is clear that the present invention is not anticipated by Fogarty. Accordingly, reconsideration and withdrawal of this rejection are appropriate.

**Rejection Under 35 USC 103(a) Based on Fogarty in view of Agnone**

The Examiner has rejected Claims 8 and 10 as being unpatentable over Fogarty in view of Agnone. Specifically, the Examiner has relied upon Agnone for its teaching of a ball and socket joint.

Applicants repeat their remarks with respect to Fogarty herein.

Like Fogarty, Agnone fails to disclose the tissue approximation device of the present invention that has an open and a closed position, and when in the closed position, the adhesive pads are parallel and non-contiguous to each other. Therefore, Agnone fails to cure the deficiency of Fogarty, and as such, the combination of these two references fails to render the present invention obvious. Accordingly, reconsideration and withdrawal of this rejection are appropriate.

Respectfully submitted,

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